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NOTE ON CERTAIN ASPECTS OF SEXUAL VIOLENCE AGAINST REFUGEE WOMEN*

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I. INTRODUCTION

1. During the past year, UNHCR has been confronted with several refugee situations in which rape and other forms of sexual violence against women and girls have been employed as a method of persecution in systematic campaigns of terror and intimidation which have forced members of particular ethnic, cultural or religious groups to flee their homes and, often, to seek refuge in another country. Numerous incidents have also occurred in which refugee women and girls have been subjected to sexual abuse during their flight or following their arrival in countries where they were seeking asylum. The magnitude, frequency and brutality of these crimes have convinced UNHCR of the need to bring this problem once again to the attention of the Executive Committee, to seek its advice and request its support for the adoption of measures to prevent such attacks and to protect and assist refugee women and girls who are victims of sexual violence.

2. The present Note examines the phenomenon of sexual abuse of refugee women and girls in the light of UNHCR's experience in the field, the implications for preventive and remedial action as well as for durable solutions, and suggests specific measures which States and UNHCR can take to combat this persistent problem. Such measures include promoting enforcement of relevant national laws and compliance with international human rights and humanitarian law, as well as the implementation of previous Executive Committee conclusions and General Assembly resolutions and of the UNHCR Guidelines on the Protection of Refugee Women.

3. The plight of refugee women and girls who have been the victims of sexual violence has been a serious concern of UNHCR, virtually since the creation of the Office. In recent years, as UNHCR has developed and refined policies and programmes relating to women refugees, the Office has focused more systematically on the specific protection problems of women, including problems relating to their physical security. The UNHCR Guidelines on the Protection of Refugee Women (the Guidelines) 1/ identify problems and needs, and suggest preventive and remedial action in connection, inter alia, with physical safety and the prevention of sexual violence.

4. In the framework of the Executive Committee, the issue of sexual abuse of refugee women has been considered in varying levels of detail since 1980, when reference was made to the rape and abduction of women and girls during piracy attacks against Vietnamese asylum-seekers on the South China Sea. 2/ The Committee adopted four specific conclusions concerning refugee women and international protection 3/, and has included references to the protection of refugee women against sexual abuse in several of the yearly general conclusions on international protection. At its forty-third session, the Executive Committee:

> ... note[d] with great concern the precarious situation of many refugee women, whose physical safety is often endangered and ... call[ed] upon all States, UNHCR and other concerned parties to ensure implementation of the Guidelines, particularly through measures aimed at eliminating all forms of sexual exploitation of and violence against refugee women,

protecting women heads of household, and promoting their active participation and involvement in decisions affecting their lives and communities. 4/

5. UNHCR considers it important once again to place the question of the protection of refugee women and girls before the Executive Committee because, despite efforts by many States and by UNHCR to implement programmes in accordance with previous conclusions and the Guidelines, the problem of sexual violence against refugee women continues and, in certain States, appears to be worse than ever. There is therefore a continuing need for sustained attention and urgent action to combat it. Furthermore, recent events, together with UNHCR s increased involvement in prevention- and solution-oriented activities in 'he countries of origin of refugees, have provided new perspectives on the problem of rape as a cause of refugee flight and an obstacle to durable solutions, and heightened awareness of the plight of the victims. By concentrating specifically upon rape and other forms of sexual violence, rather than the broader subject of violence in general against refugee women, it is hoped that this Note will provide the basis for focused consideration that may lead to a consensus on concrete ways to prevent, redress and deter this horrendous crime.

6. For the purposes of this discussion, sexual violence is any act -- or threat to commit an act -- of violence which involves the sexual abuse or exploitation of its victim against her will. The Note focuses specifically on rape, sexual extortion and forced prostitution. Although refugee women and girls are also victims of many other forms of "gender-based" or "gender-specific" violence, these will not be addressed in this Note.

7. While the focus of this Note is attacks on women and girls, it should be noted that they are not the only victims of sexual violence. Sexual attacks against men and boys occur at every stage of refugee situations and have similar effects on the victims, their families and their communities. Measures proposed to protect and assist refugee women and girls must also include provision for men and boys in similar circumstances.

II. INSTANCES OF SEXUAL VIOLENCE IN REFUGEE SITUATIONS: THE CONTEXT

8. The paragraphs which follow describe instances of rape and other forms of sexual violence committed against women and girls of concern to UNHCR, whether as a cause of their flight, during flight, or in countries of asylum. The subject is a painful one. The incidents described are both shocking and disturbing. The aim of presenting these concrete examples of the ways in which refugee women and girls are victimized is to alert the international community, through the Executive Committee, to the extent of these reprehensible practices and to the need for unstinting efforts to combat them.

A. Rape and other forms of sexual violence as a cause of flight

9. In the course of the past year alone, the Office has been involved in several large-scale refugee situations on two different continents where

systematic sexual violence against the women and girls of particular communities was one of the major causes for the flight of the refugees. The Office is aware of several other situations where rape has been an aggravating factor in internal displacement as well as in the decision of some individuals and families to seek refuge abroad. The following account is drawn directly from an internal UNHCR field report based on information provided by members of one of the large refugee groups, which includes nearly 300,000 persons:

> "With little hesitation and great consistency both the men and the women interviewed stated that their reason for leaving was to ensure the safety of the women. The surge in arrivals [in the country of asylum] appeared to be directly related to an increase in the incidence of rape. The victims' ages ranged from 15 to 52 years. The rape experience typically involved several perpetrators and often several incidents. Sometimes the military would take groups of women to their encampments. As many as thirty women would be taken at a time and kept from several days to a week. More often, however, the victims would report being raped in their homes, sometimes while a male family member was present. The interviewees explained that, in the face of heavily armed soldiers, any resistance was futile. The rape was all the more horrifying as it almost invariably took place at night, and often the soldiers would occupy several neighbouring houses at a time, thus making escape to, or help from, neighbours impossible. The soldiers were often reported to be drunk. Having taken over the use of the village place of worship for their encampment, the soldiers would also take the women there and rape them."

It may be noted that, although members of the military were involved, this abuse of power did not occur in the context of an armed conflict.

10. In the conflict in the former Yugoslavia the use of rape as an instrument of persecution has been thoroughly documented and reported. The findings of the Special Rapporteur of the Commission on Human Rights coincide with the reports of UNHCR staff in the field:

> "Rape of women, including minors, has been widespread in both conflicts. There are rapists among all ethnic groups and there are rapists among the armed forces of all parties to the conflicts. In addition, rape has been deliberatly used as an instrument of ethnic cleansing. ... The Special Rapporteur is not aware of any attempts by any of those in positions of power, either military or political, to stop the rapes...". 5/

> "Rape is an abuse of power and control in which the rapist seeks to humiliate, shame, degrade and terrify the victim. ... In this context, rape has been used not only as an attack on the individual victim, but is intended to humiliate, shame, degrade and terrify the entire ethnic group. There are reliable reports of public rapes, for example, in front of a whole village, designed to terrorize the population and force ethnic groups to flee". 6/

11. In addition to the use of rape as an instrument of persecution in systematic campaigns against entire communities, UNHCR is aware of numerous

individual cases where rape or other forms of sexual violence against women or girls by officials in their countries of origin have been among the factors forcing them to seek refuge in other countries. Women detained on political grounds -- including the suspected political activities of absent male kin -- are particularly vulnerable. Some refugee women have sought asylum after being raped or otherwise sexually tortured with a view to forcing their confession, or that of a male relative. Others have had to flee when the authorities were unwilling or unable to protect them from physical abuse, including rape, inflicted as a punishment for failing to conform to the social or cultural norms advocated by their attackers.

12. The occurrence, or the realistic fear, of rape by members of military forces, in violation of international humanitarian law, is one of the factors contributing to the flight of women and their families from many situations of armed conflict. Besides being viewed by some in the military as a "normal" by-product of war, sexual violence has also been used by armed forces, including insurgent groups, in some regions as a means of intimidating a civilian population perceived to be in political opposition to the armed force in question.

B. During flight

13. The perpetrators of sexual violence against refugee women in the course of their flight include bandits, smugglers, border guards, police, members of military and irregular forces on either side of the border, and even elements of local populations who take advantage of the utter defencelessness of arriving refugees. The need to cross military lines or areas affected by anarchy or civil war in order to reach safety puts women and girls in especially perilous circumstances. Border guards in some countries have detained refugee women or girls for weeks for their sexual use. Women have been raped by soldiers while crossing a border, and in some cases abducted and prostituted by them. In the recent past, in addition to robbery and murder, pirates have abducted women for purposes of rape over extended periods, and then killed them or sold them into prostitution. 7/ Unaccompanied women asylum-seekers arriving by air in a country of asylum, forced to spend extended periods of time in the holding area of an airport before being transferred to a hotel where they were guarded around the clock, have been raped by their guards while the authorities were deciding to which country to expel them.

C. In the country of asylum

14. Already forced to flee human rights abuses or armed conflict in their own countries, refugees, and refugee women and girls in particular, are especially vulnerable to many forms of violence in countries of asylum. In addition to the disadvantage of being foreigners in unfamiliar surroundings, the social disruption caused by flight often means that women and girls no longer benefit from the traditional protection provided by community, clan or family. They normally arrive without resources, often without documentation, and in many countries they have no effective access to legal or administrative recourse. Single unaccompanied women and girls are the most vulnerable, followed by unaccompanied female heads of household.

15. In one present large-scale refugee situation, the women have been subjected to widespread sexual violence in the country of asylum at the hands of bandits, security forces and other refugees. A large proportion of the women refugees in certain camps in remote areas are known to have been raped either by bandits or by armed bands from their country of origin. In some of these incidents it appears that sexually attacking the women was also intended by the rapists as a way of harming their men and their entire community.

16. In other countries of asylum, UNHCR has had to address the abuse of women by soldiers who kidnapped refugee children and demanded sex from their mothers as ransom for their return, as well as demands for sex by army officers in exchange for permitting refugee women to live, or seek medical treatment, outside a camp. In one country, women and girls were systematically abused by camp officials who also tortured them and those family members, including children, who tried to defend them.

17. UNHCR has also confronted the prostitution of refugee women and girls by camp officials or other refugees, sometimes in collusion with prostitution rings in nearby towns. In other cases refugee women have been offered employment in "domestic service" positions where they were coerced into sex. Unaccompanied girls are especially exposed to sexual exploitation and abuse; cases of minors entering prostitution are reported in virtually every region. Moreover, depending on the prevailing norms in the refugee community and the host society, a rape victim may suffer ostracism or be exposed to further abuse, and her peers may see no other role for her than to become a prostitute.

18. Since refugees most frequently arrive completely destitute in the country of asylum, the difficulty of meeting basic subsistence needs can provide a basis for sexual extortion from women and girls. Where there is no opportunity for employment or where camp administrative structures do not ensure that women have a voice in the distribution of rations, women may be induced to exchange sex for basic foodstuffs and other subsistence needs for themselves and their children. Male camp staff or unscrupulous refugee leaders have been known to withhold a ration card until sex was conceded.

19. In many refugee situations, particularly those involving the confinement of refugees in closed camps, traditional behavioural norms and restraints break down. In such circumstances refugee women and girls may be raped by other refugees, acting either individually or in gangs, and self-appointed leaders may thwart attempts to punish the offenders. In certain camp situations, unaccompanied women and girls have been known to enter what are called "protection marriages" in order to avoid sexual assault. The frustration of camp life can also lead to violence, including sexual abuse, within the family.

III. THE IMPLICATIONS OF SEXUAL VIOLENCE FOR PROTECTION AND SOLUTIONS

A. The consequences of sexual violence against refugees

20. Just as rape and other forms of sexual violence are a problem common to all societies, so the plight of the victim is similar whether or not she is a

refugee, but it is aggravated in the case of refugees by the conditions of uprooting and exile. Beyond the brutality and trauma of the act itself, with possibly life-long psychological harm, sexual violence can result in serious physical injury, unwanted pregnancy, disease and even the death of the victim, if the rapist is infected with HIV or if the victim resorts to illegal abortion in order to terminate an unwanted pregnancy. Some refugee women victims of rape have attempted or commited suicide because of the implications of the attack for their sense of security and self-worth, as well as for their future role in society. The care of children of rape victims who are surrendered by their mothers poses special problems in refugee situations. UNHCR has also received reports of abandonment resulting in death of newborn children of rape victims.

B. Meeting the needs of the victims

21. One of UNHCR's first priorities in addressing the problem of sexual violence against refugees is to meet the needs of the victims. The devastating consequences of sexual violence for the victim's family and community must also be recognized and addressed. The range of needs and possible programme responses are summarized in the Guidelines 8/ and it is not proposed to reiterate them here. It is clear that both medical and appropriate psycho-social care and counselling are of critical importance for victims of rape and other forms of sexual violence. Special measures with respect to accommodation, documentation, recognition of refugee status and durable solutions may also be necessary, as is indicated in the Guidelines. UNHCR uses the Guidelines in its People-Oriented Planning (POP) training with a view to ensuring that they are incorporated into the daily work of all those who may have an impact on the protection of refugee women and girls, including UNHCR field, programme and protection staff, as well as the staff of governmental and non-governmental agencies dealing with refugees.

22. One obstacle to providing appropriate care to victims of sexual violence is the desire of many of the victims themselves to remain silent about their experience, often owing at least in part to a wholly understandable concern about how they will be regarded and treated by others because of it. In several of the instances of rape described above, UNHCR was able to learn of the extent of the attacks only when the victims were obliged to seek medical care. Regardless of nationality and culture, rape is experienced by most victims as shameful and stigmatizing, and arouses fears, often justified, of rejection by a present or future partner. The problem is aggravated in the many societies where protection of a woman's chastity is considered a matter of family honour. Even under normal circumstances, sex generally is not a subject of open discussion in many cultural contexts, and the experience of the Office has confirmed that the victim of rape often prefers to hide her victimization to escape the shame and ostracism it could bring upon her, her family and her community. To avoid further stigmatization and respect their need for privacy, it has been found useful to provide care and treatment to victims of sexual abuse within the framework of programmes to meet the needs of women generally, so that they are not singled out or "labeled" as rape victims. The presence of women field, protection, medical and social services staff is also essential for victims of sexual violence to obtain the protection, treatment and counselling they require.

C. Durable solutions for victims of sexual violence

23. Finding the appropriate durable solution for refugee victims of sexual violence can pose special problems. For many, perhaps most, the support of family, friends and community will be essential to their recovery from the trauma they have suffered, and the appropriate durable solution will be the same as for the other members of their communities. For some, particularly unaccompanied or abandoned women who have been subjected to sexual abuse in or en route to the country of asylum, early voluntary repatriation to their own culture and society may be in their best interests, and in some cases provide an escape from an intolerable situation. For other women and girls, repatriation may represent return to a situation where the threat of sexual violence still exists or where the victim of rape will suffer ostracism or severe discrimination. For this and other reasons it is essential that, in accordance with the Guidelines 9/, women have the opportunity to make an individual decision with respect to repatriation.

24. Whether local integration is a desirable option for women who have suffered sexual abuse will depend on many factors, including the policies of the Government concerned, facilities for reception, treatment and care, and the situation of similarly situated women in the local culture. When there are linguistic and cultural affinities with the country of origin, as well as adequate programmes of care, it may be better to remain in a country of first asylum than to be resettled in unfamiliar surroundings in another region. Resettlement is an important option, however, for victims of sexual violence for whom neither repatriation nor local integration is a viable solution. Urgent resettlement might provide the best chances for emotional recovery for victims of rape, and sometimes can be required for the security of both the victim and witnesses to the crime if their protection cannot be ensured in the country of asylum. Several States have special resettlement programmes for women-at-risk which have been extremely helpful in meeting this need. Care must always be taken, however, that rape accusations do not come to be seen as a means to obtaining rapid resettlement.

D. Legal considerations relevant to combating sexual violence

25. As the Secretary-General of the United Nations said on the occasion of International Women's Day in 1993:

> "While there has been steady progress in the articulation and implementation of women's rights in many countries, a reversion to barbarism has occurred in others. Some countries have seen the use of systematic sexual violence against women as a weapon of war to degrade and humiliate entire populations. Rape is the most despicable crime against women; mass rape is an abomination. ... War today involves more civilian deaths and casualties -- including women -- than at any time in history. The eradication of such criminal forms of warfare is high on the Agenda for Peace of the United Nations."

The following sections examine sexual violence in refugee situations in the light of international human rights, refugee and humanitarian law as well as

domestic law, and discuss legal and practical measures that can be adopted to prevent and deter these practices.

1. Sexual violence as a violation of international law

26. In addition to being a serious crime in all countries, rape is a grave violation of the fundamental human right to security of person, including the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. 10/ Where sexual violence results directly or indirectly in the victim's death, the fundamental right to life is also violated. 11/ The right to freedom from slavery is violated in the case of forced prostitution. 12/ These rights are so fundamental that no circumstance whatsoever justifies their derogation under international law. 13/ Sexual abuse of children is also a violation of the Convention on the Rights of the Child. 14/

27. When it is committed against protected persons, including civilians, in the context of an armed conflict, whether international or internal in character, sexual violence is also a violation of international humanitarian law. Rape and other forms of sexual abuse not only violate the prohibitions of violence to person, cruel treatment and torture, and degrading treatment contained in the four Geneva Conventions of 1949; international humanitarian law also explicitly prohibits rape. Article 27 of the Fourth Geneva Convention of 1949 states: "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." This provision is reiterated in Additional Protocols I and II. 15/

28. The decision of the United Nations Security Council to establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 16/ opens new prospects for the international enforcement of the provisions of humanitarian law, including those protecting women and girls against sexual violence. In its resolution the Security Council specifically referred to the question of the treatment of women. While rape is not specifically mentioned in the lists of grave breaches of the Geneva Conventions, "torture or inhuman treatment ... willfully causing great suffering or serious injury to body or health" of a protected person is a grave breach. 17/ The Special Rapporteur of the Commission on Human Rights for the former Yugoslavia considers that rape in the context of "ethnic cleansing" may be characterized as "a grave breach of the Fourth Convention (art. 147) and, as such, a war crime" 18/, as defined in Article 85(5) of Additional Protocol I. It may be noted that the definition of war crimes in Article 6 of the 1945 London Charter of the International Military Tribunal includes "violations of the laws and customs of war [including] ill-treatment or deportation ... of civilian population of or in occupied territory... ." Moreover, the Declaration concerning the Protection of Women and Children in Emergency and Armed Conflict adopted by the General Assembly in 1974 states, inter alia, that "all forms of repression and cruel and inhuman treatment of women and children ... committed by belligerents in the course of military operations or in occupied territories shall be considered criminal." 19/

2. Sexual violence as persecution under the refugee definition

29. There can be no doubt that when rape or other forms of sexual violence committed for reasons of race, religion, nationality, political opinion or membership of a particular social group is condoned by the authorities, it may be considered persecution under the definition of the term "refugee" in the 1951 Convention relating to the Status of Refugees (Article 1 A (2)). A well-founded fear of rape in such circumstances can thus provide the basis for a claim to refugee status. The experience of rape or sexual torture as a form of persecution might also constitute "compelling reasons arising out of previous persecution" for not applying the cessation clauses in Article 1 C (5) and (6) of the 1951 Convention.

3. Sexual violence and other relevant provisions of international law

30. In 1990, the Executive Committee, in a conclusion later endorsed by the General Assembly, stressed that:

> "... all action taken on behalf of women who are refugees must be guided by the relevant international instruments relating to the status of refugees as well as other applicable human rights instruments, in particular, for parties thereto, the United Nations Convention on the Elimination of All Forms of Discrimination against Women". 20/

The denial of the rights of women and girls to freedom from discrimination and to equality before the law 21/ may result in failure to protect them from sexual violence or to provide them with effective remedies against it. The obligations of the State with respect to the proper administration of justice and the provision and enforcement of effective remedies for violations of human rights 22/ also clearly imply the obligation to protect the individual against rape and other forms of sexual violence.

E. Legal and practical measures to prevent sexual violence

31. The foundation for the protection of the physical security of refugee women, as well as for that of refugees generally, is the universally recognized responsibility of the State to respect and to ensure the fundamental rights of all individuals within its territory. The international system for the protection of refugees and the international system for the protection of human rights both rely first and foremost on States to discharge their responsibilility to persons in need of protection. Consequently, effective action to protect refugee women against crimes of sexual violence requires above all the cooperation of the Governments concerned. In this connection it is useful to distinguish protection and remedial action in countries of asylum from preventive activities in countries of origin, both before people are forced to become refugees and with regard to voluntary repatriation.

1. Combating sexual abuse in countries of asylum

32. Although education of refugee women about their human rights has given rape victims in some countries of asylum sufficient knowledge and confidence to report and combat sexual abuse, there are many obstacles to protecting refugee women and girls from sexual violence. The reluctance of the victims to speak of the experience often includes unwillingness to press charges against the attackers. In such cases, the criminal justice system provides little recourse, and in consequence the rapist commits his crime with impunity. In many cases the main reasons for silence may be to avoid the stigma and negative social consequences, already discussed, of being seen as a rape victim, but also the desire to forget, to avoid reliving the traumatic experience in her mind. The small likelihood of success in court is also a factor. In some countries, unless the victim has overwhelming proof, judges are more likely to accuse her of provoking the attack than to convict the accused. Moreover, lodging a complaint against persons in positions of power or influence may be seen as futile and also dangerous to the victim's family. Other reasons why refugee women hesitate to speak out while in the country of asylum include the real or perceived potential for recrimination by camp authorities, security officers or other refugees; the unsympathetic attitude of the authorities, public prosecutors or the refugee committees responsible for the administration of justice; the possibility that resettlement might be delayed by a court case; and the lack of effective protection against further attacks by the accused. Women and girls in detention may be afraid to seek redress while they are still in the power of their abusers. Effective legal action may be impossible without proper documentation and without legal counsel.

33. The discussion above points to the need for firm measures by States to protect and defend the victims, as well as to punish the perpetrators of sexual violence against refugees. The authorities responsible for protecting refugees and for enforcing the law must be informed of sexual violence, recognize it as a crime and take effective action against it, even when it is committed by Government officials or the armed forces, or when the circumstances are otherwise politically embarassing. Despite the difficulties, prosecutions can be effective in punishing and deterring attacks, as evidenced by the succesful efforts of the Royal Thai Government, assisted by UNHCR, to punish pirates who had attacked Vietnamese asylum-seekers.

34. For effective protection, however, legal action needs to be accompanied by practical measures to prevent attacks on refugee women and girls. Again, many of the measures required are set out in the Guidelines. These include suggestions concerning camp design; the participation of refugee women in decisions affecting security; avoidance of detention or closed facilities; training for UNHCR, host-country and NGO staff, border guards, police, armed forces personnel and others who come into contact with refugees; support for law enforcement activities; employment of female field, protection health and social services staff, etc. Access by UNHCR to refugees and asylum-seekers in border areas which refugee women must cross to enter the country, as well as in reception centres, refugee camps and settlements, is an important practical protection tool.